

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

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MAY 16 1994

In the Matter of

Implementation of Sections 3(n)
and 332 of the Communications ActRegulatory Treatment of Mobile
Services

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GN Docket No. 93-252

OPPOSITION TO PETITIONS FOR RECONSIDERATION

NYNEX Corporation ("NYNEX"), on behalf of New York Telephone Company, New England Telephone and Telegraph Company, and NYNEX Mobile Communications Company, hereby opposes several of the Petitions for Reconsideration of the Commission's Second Report and Order¹ in the above-captioned matter. As shown herein, these petitioners have presented no new facts or changed circumstances which would warrant reconsideration of the Second Report and Order.² Their petitions should be denied.³

¹ 9 FCC Rcd 1411 (1994). Petitions for Reconsideration were filed by 15 parties: MCI, McCaw, the National Cellular Resellers Association (NCRA), Waterway Communications, GTE, the New York Department of Public Service (NYDPS), American Mobile Telecommunications Association (AMTA), Ameritech, Pacific Bell, SEIKO, Pennsylvania PUC, Cellular Service, Inc. (CSI), NARUC, CUE Network Corporation and the Personal Communications Industry Association (PCIA).

² See 47 CFR § 1.106.

³ NYNEX, however, supports Ameritech's request that the Commission initiate a proceeding to investigate whether the structural separation requirements should continue to

(Footnote Continued On Next Page)

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I. THE COMMISSION'S DEFINITION OF COMMERCIAL MOBILE RADIO SERVICE IS APPROPRIATE.

The Communications Act defines commercial mobile radio service (CMRS) as any mobile service that is provided for profit and makes interconnected service available to the public or a substantial portion of the public.⁴ AMTA asks the Commission to modify its CMRS definition to exclude those CMRS providers that serve less than 50,000 subscribers. AMTA's request should be denied.

As the Commission correctly observed in its Second Report and Order, Congress intended to include within its definition those CMRS providers that make their services generally available to the public without restriction on who may receive it. The Commission explicitly rejected attempts to limit the definition of CMRS based on such factors as system capacity or geographic location. The fact that a CMRS provider's subscriber base is small should be of no consequence so long as the service is offered indiscriminately to the general public. The only mobile radio services that should not

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be imposed upon the BOCs' cellular operations. Contrary to the Commission's conclusion (§ 218), the uncontroverted record evidence in this proceeding demonstrated that the concerns which led to the adoption of the structural separation requirements for BOCs and their cellular operations are no longer valid in today's competitive markets. As a result, those requirements should have been eliminated. Failing to do so, the Commission should immediately undertake to initiate the proceeding sought in the Ameritech request; considerations of regulatory parity require no less.

4 47 U.S.C.A. § 332(d)(1).

be considered as being available to a substantial portion of the public are those that are provided exclusively for internal use or are offered only to a significantly restricted class of eligible users.⁵

II. THE COMMISSION SHOULD CONSIDER THE QUESTION OF CELLULAR INTERCONNECTION AT A LATER DATE.

In the Second Report and Order, the Commission deferred the question of whether cellular resellers are entitled to interconnect with facilities-based cellular carriers. Instead, the Commission decided to pursue that question in a separate proceeding.⁶ Several parties urge the Commission to reconsider this decision and order interconnection now.⁷

As the Commission correctly concluded in the Second Report and Order, this issue is complex and requires further analysis after development of a full record. While the Communications Act requires interconnection upon reasonable request, it is appropriate that the Commission establish policy guidelines in this area. As a result, the issues raised by NCRA's and CSI's request for switch interconnection should be

⁵ Second Report and Order, ¶¶ 66-67.

⁶ Second Report and Order, ¶ 237. At its public meeting on June 9, 1994, the Commission announced that it was initiating this proceeding.

⁷ See, e.g., CSI Petition, p. 2; NCRA Petition, p. 5.

considered as part of the Commission's forthcoming interconnection inquiry.⁸

III. THE COMMISSION SHOULD NOT REQUIRE OR PERMIT CELLULAR CARRIERS TO FILE TARIFFS.

In the Second Report and Order, the Commission decided that it would not require or permit CMRS providers to file tariffs for interstate access services or for interstate services offered directly to end users. MCI and NCRA ask that this decision be reconsidered. Their request should be denied.⁹

The Commission found that the evidence in the record demonstrated that the cellular market was sufficiently competitive such that there was no need for full-scale regulation of cellular or any other CMRS offerings.¹⁰ Petitioners have presented no new facts to demonstrate that this finding was wrong. As NYNEX pointed out in its Comments (p. 19), based on their review of the state of competition that existed in their markets, 42 states have already deregulated or streamlined the regulation of cellular services. Requiring or even permitting tariff filings can inhibit competition and

⁸ NCRA and CSI are wrong, however, in asserting that facilities-based cellular carriers have control over bottleneck facilities, *i.e.*, the MTSO. There are only two cellular licensees in a given geographic area because of the current regulatory scheme, not because these carriers have control over essential or bottleneck facilities that cannot be easily duplicated.

⁹ Second Report and Order, ¶ 179.

¹⁰ Second Report and Order, ¶ 174.

enable carriers to maintain rates at an artificially high level.¹¹ The Commission should therefore deny MCI's and NCRA's petitions.

IV. CMRS PROVIDERS SHOULD BE UNIFORMLY REGULATED.

Several parties¹² argue that the Commission should not regulate state interconnection rates charged by CMRS providers. These arguments are premature since the Commission has yet to require interconnection. Individual state regulation of interconnection, however, has the potential to create a hodge-podge of requirements that would inhibit the development of an open network architecture. A uniform regulatory policy for CMRS would be more appropriate.

Other parties¹³ argue that the Commission has exceeded its statutory authority by requiring a state regulatory commission to identify and provide a detailed description of the specific rules that it would establish if the Commission were to allow the states to regulate CMRS rates. However, the statute is clear that the Commission may only grant the states the authority to regulate rates to the extent necessary to ensure that rates are just and reasonable.¹⁴ The Commission's regulations ensure that this statutory mandate will be met.

¹¹ Id., ¶ 177.

¹² See, e.g., NYDPS, p. 2.

¹³ See, e.g., PAPUC, p. 3.

¹⁴ See 47 U.S.C.A. § 332(c)(3).

V. STATES SHOULD REGULATE THE COMPENSATION ARRANGEMENTS
BETWEEN LECs AND CELLULAR CARRIERS.

In the Second Report and Order, the Commission decided that it would preempt state regulation of the terms and conditions of interconnection arrangements between LECs and CMRS providers, but would not preempt state regulation of intrastate interconnection rates. With respect to interstate interconnection, the Commission decided that it would require LECs to negotiate mutual compensation arrangements with cellular carriers.¹⁵

McCaw and MCI argue that the principle of mutual compensation should apply to intrastate interconnection arrangements as well.¹⁶ However, as the Commission observed, LEC costs associated with the provision of interconnection for interstate and intrastate cellular services are segregable.¹⁷ Furthermore, there is nothing in the Communications Act which indicates that Congress clearly intended to preempt state regulation of such rates. The issue of mutual compensation for LEC intrastate interconnection is therefore appropriately reserved to the States.

¹⁵ Second Report and Order, ¶¶ 230-31.

¹⁶ See, e.g., McCaw, p. 7.

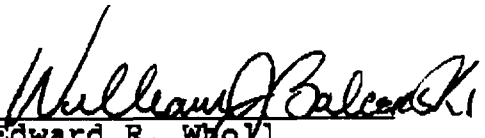
¹⁷ Second Report and Order, ¶ 231.

VI. CONCLUSION

For the foregoing reasons, the Commission should deny the Petitions for Reconsideration filed in this proceeding. However, the Commission should initiate a proceeding to determine whether the structural separation requirements should continue to be imposed upon the BOCs' cellular operations..

Respectfully submitted,

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Dated: June 16, 1994

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CERTIFICATE OF SERVICE

I certify that copies of the foregoing OPPOSITION TO PETITIONS FOR RECONSIDERATION, CC Docket No. 93-252, were served on each of the parties listed on the attached Service List, this 16th day of June, 1994, by first class United States mail, postage prepaid.


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